CADWALADER

Cadwalader Enforcement Insights Q2 2025

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DOJ Policy Updates

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1. DOJ Overhauls Corporate Enforcement Tools

On May 12, 2025, Matthew R. Galeotti, Assistant Attorney General of the Department of Justice (DOJ) Criminal Division, **announced updated priorities and policies** for prosecuting corporate and white collar crime. The priorities, which align with the Trump administration's executive priorities, include, but are not limited to, (i) fraud, waste, and abuse; (ii) bribery and associated money laundering; and (iii) conduct that threatens U.S. national security. The policy updates include revisions to the Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP), a revised—and narrowed approach—to the appointment of corporate monitors, and an expansion of the subject areas included in the DOJ's whistleblower program.

First, the revised CEP attempts to upgrade the incentives and predictability of voluntary self-disclosures by explicitly declaring a company "will" receive a declination, not just the presumption of a declination, if the company: (i) meets all voluntary self-disclosure requirements, (ii) fully cooperates, (iii) exhibits timely and appropriate remediation, and (iv) lacks aggravating circumstances. "Aggravating circumstances" is more narrowly defined under the revised CEP, including "criminal adjudication or resolution within the last five years based on similar misconduct by the entity engaged in the current misconduct." Under this more narrow definition, certain recidivists will be able to obtain declinations if the remaining factors are met. Even where recidivism is an aggravating circumstance, prosecutors retain discretion to recommend a declination. The updated CEP also introduces a "Near Miss" category imposing reduced consequences for companies that have aggravating circumstances or do not meet the DOJ's definition of voluntary self-disclosure. This middle-ground option may appeal to companies involved in more egregious misconduct, especially in light of the harsher penalties for companies ineligible for other resolutions.

Second, the DOJ's **new corporate monitor selection policy** outlines four key factors for determining whether a monitor is appropriate in a given case: (i) the risk of recurrence of criminal conduct affecting U.S. interests; (ii) the availability and effectiveness of other independent government oversight; (iii) the efficacy of the company's compliance program; and (iv) the maturity of the company's internal controls and its ability to test and improve them. Emphasizing that a monitor is deemed necessary only where "there was a demonstrated need for and benefit to be derived from the monitorship that outweighed the cost and burden of the monitorship," DOJ policy now requires that it be a collaborative and budget-capped endeavor, subject to biannual tripartite meetings between the DOJ, the company, and the monitor. This policy is intended to ensure any monitorships remain proportionate to the misconduct and company profile. As we reported last quarter—prior to the issuance of the revised monitor selection policy, but in line with the sentiments later to be expressed in it—the DOJ reviewed and terminated two monitorships for **Glencore**. It has also been reported that the DOJ is **reviewing existing monitorships**, although, to date, no other monitorships have been terminated early and reports indicate that at least two monitorships—for Balfour Beatty Communities and TD Bank— **will remain in place**.

Third, several priority subject areas were added to the DOJ's offer of potential whistleblower recovery under its **three-year whistleblower pilot program**. These include: (1) procurement and federal programs fraud; (2) trade, tariff, and customs fraud; and (3) conduct involving sanctions, material support of foreign terrorist organizations, or those that facilitate cartels and transnational criminal organizations (TCOs), including money laundering, narcotics, and Controlled Substances Act violations. The updated priorities reflect the Trump Administration's enforcement agenda, emphasizing national security and prevention of transnational threats while scaling back broader financial oversight and regulatory intervention. Since this memo was issued in May, AAG **Galeotti has announced** that the DOJ has already seen "robust tips from whistleblowers" that "cover many of the areas of focus in the [May 12] memo," including tips relating to drug trafficking and corruption, procurement fraud, and healthcare fraud.

2. FCPA Enforcement Resumes

On June 9, 2025, the **DOJ announced the resumption of Foreign Corrupt Practices Act** (FCPA) enforcement, ending the enforcement pause initiated by **Executive Order 14209**. The DOJ's new **Guidelines for Investigations and Enforcement of the Foreign Corrupt Practices Act** (Guidelines) declare a renewed, yet narrowed, approach to FCPA enforcement.

The Guidelines align closely with the Trump administration's prior directives to target cartels and TCOs, promote U.S. entities' competitiveness overseas, and advance national security, with an express focus on the defense, intelligence and critical infrastructure sectors. Under the Guidelines, DOJ prosecutors are directed to evaluate potential FCPA investigations and enforcement actions based on four non-exhaustive factors: (1) involvement of cartels or TCOs; (2)

economic injury to identifiable U.S. companies or individuals, particularly in cases where foreign actors gained an unfair advantage or where demand-side bribery harmed American interests; (3) threats to U.S. national security, with express focus on enforcement in the defense, intelligence, and critical infrastructure sectors; and (4) the seriousness of the misconduct, focusing on substantial bribes, sophisticated concealment efforts, fraudulent conduct in furtherance of the bribery scheme, and obstruction of justice. The Guidelines also establish a more rigorous vetting and approval process for new FCPA investigations and enforcement actions—requiring that all new FCPA matters be approved by either the Assistant Attorney General for the Criminal Division (or the official acting in that capacity) or a more senior DOJ official.

While the Guidelines may give the impression that enforcement will look different, the continued focus on foreign companies with U.S. ties and the emphasis on historically high-risk industries reflect a clear through-line that remains faithful to the FCPA's enforcement history. To wit, nine out of the ten **largest FCPA settlements** to date have been against foreign companies listed in the U.S. Additionally, while the requirement of approval from senior officials may slow the opening of certain investigations and associated preliminary steps, it is unlikely to delay or deter high-priority cases, which may move even more quickly under renewed prosecutorial focus.

What remains unclear is whether the DOJ will have the resources to pursue these priorities, whether the Securities and Exchange Commission (SEC) will align their FCPA enforcement priorities with those of the DOJ, whether foreign governments will respond by targeting U.S.-based companies, and whether the revised Guidelines will materially change the types of cases that ultimately move forward.

Moving forward, companies and compliance teams should use the Guidelines as a prompt to remind employees of what is prohibited by the FCPA and to highlight that the DOJ has made clear that it plans to continue largely familiar enforcement practices. This is especially true in high-risk regions where employees may have misinterpreted the FCPA pause as a signal to relax standards. Moreover, it is in every company's best interest to prioritize documenting and demonstrating that its compliance program is operating effectively, and that its compliance training is not only happening but is also effective. In the event of DOJ scrutiny of misconduct, a company's ability to demonstrate a functioning and well-communicated compliance program can make a meaningful difference in reaching a favorable resolution. Proactively training employees and refocusing on the basics of FCPA compliance is best practice.

In sum, federal whistleblower incentives remain fully intact, FCPA enforcement has resumed, and the DOJ's revised focus suggests a more selective but no less aggressive enforcement posture.

3. DOJ Announces Shift in Digital Assets Enforcement Priorities

In April, the DOJ **announced** that it "will no longer pursue litigation or enforcement actions that have the effect of superimposing regulatory frameworks on digital assets." This marks a significant shift from the previous administration's enforcement strategy and specifically orders that all ongoing DOJ investigations inconsistent with the announcement be closed.

The DOJ's announcement aligns with the policies set forth in the White House's **crypto executive order** by ending prosecution of "virtual currency exchanges, mixing and tumbling services, and offline wallets for the acts of their end users or unwitting violations of regulations." Enforcement will now focus primarily on bad actors and acts that victimize cryptocurrency investors, such as embezzlement, misappropriation of customer funds, scams, hacks, and rug pulls. The DOJ will also prioritize cases where digital assets are used by cartels, foreign terrorist organizations, and specially designated global terrorists to engage in unlawful conduct, consistent with **administration priorities**. The DOJ further seeks to protect investors by directing the Office of Legislative Affairs and the Office of Legal Policy to propose victim-protective legislation and regulations that would improve asset-forfeiture efforts in the digital assets space.

The DOJ's shift in enforcement strategy reflects the President's directive to end "regulation by prosecution" and limit criminal enforcement to clear cases of investor harm, rather than using the DOJ to shape digital asset policy. Consistent with this directive, the memo ordered the Market Integrity and Major Frauds Unit to cease cryptocurrency enforcement and disbanded the National Cryptocurrency Team, but permitted the Criminal Division's Computer Crime and Intellectual Property Section to continue to serve as liaisons between the DOJ and the digital asset industry. By removing the DOJ's crypto policy arm, the administration aims to encourage the responsible regulation of blockchain technologies without the chilling effect of overlapping or punitive enforcement. The changes announced by the DOJ underscore the administration's unified regulatory commitment to reshaping the existing digital asset market into one that is more transparent and investor-focused.

SEC Policy Updates

July 9, 2025

1. Trump Pick Atkins Sworn In To Lead SEC

On April 21, 2025, Paul Atkins was **sworn into office** to be the next Chair of the SEC after a 52-44 vote by the Senate. Atkins, a previous SEC Commissioner, rejoins the Commission at a pivotal time for the future of digital markets. As Chair, he will be working alongside fellow crypto advocates, SEC Commissioners Mark Uyeda and Hester Peirce. The crypto industry widely celebrated Atkins' confirmation and crypto markets reacted favorably, with Bitcoin eclipsing $100,000 only weeks after his confirmation.

During his confirmation hearing, Chairman Atkins **testified** that his goals included: "[T]o protect investors from fraud, to keep politics out of how our securities laws and regulations are applied, and to advance clear rules of the road that encourage investment in our economy to the benefit of all Americans." Since then, Atkins has taken quick action to **promote innovation** across the SEC, such as by (i) directing staff to draft rule proposals relating to crypto; (ii) integrating the SEC's Strategic Hub for Innovation and Financial Technology (FinHub) throughout the agency; (iii) encouraging the SEC to reconsider its position that closed-end funds investing 15% or more of their assets in private funds should have a minimum initial investment requirement and be available only to accredited investors; and (iv) instructing SEC staff to undertake a comprehensive review of the Consolidated Audit Trail.

2. SEC Won't Revisit Off-Channel Communications Settlements With 16 Financial Services Firms

Between the span of December 2021 and October 2024, the SEC conducted enforcement "sweeps" across the financial services and banking industry relating to the unapproved use of off-channel communications, business communications on employees' personal devices, and SEC recordkeeping obligations. These sweeps resulted in settlements with over 100 firms and penalties of approximately $2 billion. Sixteen firms, which previously reached settlements with the SEC and agreed to undertake certain remediation efforts, submitted a motion to the Commission seeking to modify their settlement orders to align more closely with the agreements signed by other firms that settled with the SEC more recently which involved less burdensome remediation efforts. The sixteen firms requested a number of modifications, including: (i) replacing a two-year independent compliance review with a one-time internal audit; (ii) eliminating the requirement to report employee discipline related to off-channel communications; and (iii) removing the obligation to file a FINRA Membership Continuation Application and submit to six years of heightened supervision.

On April 14, 2025, the SEC **denied the motion to modify or amend the settlements**. The SEC was not persuaded by the firms' claims that they were being penalized for settling earlier than other firms. The SEC further explained, "the decision to settle early carries both an inherent risk and potential benefit: Though the settling party must act with relatively less information than those that settle later, it avoids the time and expense of further negotiation and litigation. Settlor's remorse—and a desire to revisit that risk calculus—does not justify upsetting a final, agreed-upon settled order." In response, **FINRA announced** that it would work to modify the heightened supervision plans applicable to all firms that signed settlement agreements prior to January 2025.

3. SEC Clarifies Reserve-Backed Stablecoins Are Not Securities

On April 4, 2025, the SEC's Division of Corporate Finance **issued a statement** on the application of federal securities laws to certain crypto assets, namely focusing on reserve-backed dollar "stablecoins." The statement declared that the offer and sale of reserve-backed dollar stablecoins do not qualify as securities transactions.

Reserve-backed stablecoins are designed to maintain a stable value relative to the U.S. dollar by holding at least enough low-risk assets in reserve to fully exchange all tokens for dollars at any time. The issuers of such tokens often promote the tokens for their stable value, but clarify that the purchase of the token does not confer ownership, or entitle a purchaser to interest, returns, or financial benefit. Unlike notes that are purchased as an investment or with the expectation of certain returns, or investments made with the expectation of profit derived from the efforts of others, the SEC opined that stablecoins are "digital dollars" with a consumer-oriented use. As such, the SEC concluded that stablecoins do not meet the legal definition of a security under existing federal law.

The statement came amidst legislative efforts in both chambers of Congress to regulate reserve-backed stablecoins. In June 2025, the Senate passed the Guiding and Establishing National Innovation for U.S. Stablecoins Act (GENIUS Act) of 2025 (**S. 1582**), which outlines a framework of federal and state regulations for stablecoins. The GENIUS Act explicitly defines "payment stablecoin" to exclude securities as defined by U.S. securities laws. It proposes amendments to the Investment Advisers Act of 1940, Investment Company Act of 1940, Securities Act of 1933,

Securities Exchange Act of 1934, Securities Investor Protection Act of 1970, and Commodity Exchange Act to ensure that payment stablecoins will not be treated as securities or commodities, and that payment stablecoin issuers will not be treated as investment companies.

In April 2025, the House Financial Services Committee passed the Stablecoin Transparency and Accountability for a Better Ledger Economy Act (STABLE Act) of 2025 (**H.R. 2392**), establishing similar oversight standards for stablecoin issuers. Both bills are currently awaiting further consideration in the House of Representatives.

Notable Case Updates

July 9, 2025

1. SCOTUS Expands Criminal Wire Fraud Liability to Claims with No Economic Loss

On May 22, 2025, the Supreme Court issued a decision in **Kousisis v. United States**. The defendants, an industrial painting company and its project manager, had been convicted of wire fraud and conspiracy to commit wire fraud, in violation of 18 U.S.C. §§ 1343 and 1349.

The government alleged that the defendants obtained two projects from the Pennsylvania Department of Transportation (PennDOT) under a scheme that required a portion of each project to be subcontracted to a disadvantaged business. The defendants allegedly falsely represented to PennDOT that they were in compliance with the disadvantaged business scheme, but used the prequalified disadvantaged business as a "pass-through" entity to do business with their actual suppliers. The defendants appealed their convictions, arguing that they did not intend to cause PennDOT any economic loss and that PennDOT had not suffered any economic loss, as they had provided something of value to the agency.

The Supreme Court affirmed the convictions, and held that economic loss was not an element of a federal wire fraud offense, stating that "[u]nder the fraudulent-inducement theory, a defendant commits federal fraud whenever he uses a material misstatement to trick a victim into a contract that requires handing over her money or property—regardless of whether he seeks to cause the victim net pecuniary loss." The Court also held that under common law, "deception-induced deprivation of property" was sufficient to establish injury even without accompanying economic loss.

The Court noted that its decision was consistent with its prior holding in Ciminelli v. United States, 598 U.S. 306 (2023), in which it held that the right to control economic interests could not serve as the basis for a wire fraud conviction. In Ciminelli, the Court rejected the lower court's finding that, under the right to control theory, false statements or misstatements made during contracting that led to a deprivation of economic information to make fully informed economic decisions but no economic loss could be considered property interests under the federal wire fraud statute. Unlike Ciminelli, the Court characterized the fraud in Kousisis as one that sought to deprive PennDOT of money, not just the information necessary for PennDOT to make an informed economic decision.

The Kousisis decision could have far-reaching effects on federal prosecutorial power. In addition to wire fraud, other federal fraud statutes, such as healthcare fraud, make no mention of economic loss and are **key enforcement priorities** for the second Trump administration. This could encourage federal prosecutors to more aggressively bring federal fraud charges, including in connection with False Claims Act enforcement. It remains to be seen, however, how litigants and lower courts are able to utilize the fraudulent inducement theory established in Kousisis without implicating the right to control theory rejected in Ciminelli in cases involving no economic loss.

2. DOJ Changes Course and Settles with Boeing in 737 MAX Case

On May 23, 2025, DOJ **announced** that it had reached an agreement in principle with Boeing regarding the terms of a non-prosecution agreement (NPA) to resolve its criminal prosecution of Boeing for breaching the terms of a 2021 deferred prosecution **agreement** (DPA) relating to two fatal Boeing 737 MAX airplane crashes in 2018 and 2019. As part of the NPA, Boeing must admit to "conspiracy to obstruct and impede the lawful operation of the Federal Aviation Administration Aircraft Evaluation Group." Boeing also agreed to pay $1.1 billion, of which over $445 million would be specifically allocated to victims' families.

The NPA follows U.S. District Court Judge Reed O'Connor's **December 2024 rejection** of a July 2024 plea agreement for Boeing's failure to comply with the 2021 DPA. The terms of the proposed plea agreement required the appointment of an independent compliance monitor. First, the court found that the requirement that this monitor be selected in accordance with the DOJ's then-stated commitment to diversity and inclusion was discriminatory and against public policy. Second, the court found the plea agreement's proposal that the monitor be selected by and report to the DOJ inappropriately marginalized the court and was against public policy. While the May 2025 NPA does not require the appointment of an independent compliance monitor to oversee Boeing, it does require Boeing to engage an independent compliance consultant to oversee agreed upon remediation and enhancements to its compliance program.

On May 29, 2025, the DOJ filed its motion to dismiss the case without prejudice, stating that the parties had finalized the NPA. In response, victims' families filed an objection, asking the court to reject the NPA and appoint a special prosecutor. The motion to dismiss remains pending.

3. DOJ Announces Two Declinations Under National Security Division Enforcement Policy for Business Organizations

On April 30, 2025, the DOJ **declined prosecution** of Universities Space Research Association (USRA) after it self-disclosed violations of U.S. export controls laws pursuant to the DOJ's National Security Division (NSD) **Enforcement Policy for Business Organizations** (Enforcement Policy), marking only the second declination under the Enforcement Policy since it was updated in March 2024. Shortly thereafter, on June 16, 2025, the DOJ **declined prosecution** of White Deer Management LLC (White Deer) pursuant to the DOJ's NSD Mergers and Acquisitions Safe Harbor Policy (M&A Safe Harbor Policy). This is the first declination under the NSD M&A Safe Harbor Policy, which was **announced in October 2023**. Although Attorney General Pam Bondi **announced the disbanding** of the NSD's Corporate Enforcement Unit in February 2025, these declinations indicate that the DOJ continues to investigate corporate misconduct that threatens U.S. national security concerns and values full and thorough cooperation from companies.

The NSD Enforcement Policy provides that absent aggravating circumstances, a company that "(1) voluntarily self-discloses to NSD potentially criminal violations arising out of or relating to the enforcement of export control or sanctions laws (2) fully cooperates, and (3) timely and appropriately remediates," will presumptively receive a non-prosecution agreement, with no fine. The NSD Enforcement Policy also permits the NSD to issue a declination at its discretion. Under the NSD M&A Safe Harbor Policy, a company that "undertakes a lawful, bona fide acquisition of another company and, through due diligence conducted either shortly before or shortly after the transaction, becomes aware of potential criminal violations of export control, sanctions, or other laws affecting U.S. national security by the acquired company" may presumptively receive a declination if it voluntarily and timely self-discloses to the DOJ, fully cooperates with any investigation, and timely and appropriately remediates the misconduct.

In the USRA matter, USRA discovered that an employee had been selling and exporting NASA's flight control and optimization software to a Chinese university. As the university, Beijing University of Aeronautics and Astronautics, a/k/a Beihang University, was listed on the Department of Commerce's Entity List, any sales required an export license under the Export Administration Regulations. The USRA employee later admitted that he willfully exported software on four occasions without the requisite licenses. The employee also admitted to embezzling $161,000 in funds from software license sales. Within days of the employee's admission of wrongdoing to outside counsel, USRA self-disclosed to the NSD. USRA terminated the employee and disciplined the supervising employee. USRA also voluntarily re-paid the agencies impacted by the employee's embezzlement. The NSD determined that USRA had exceptionally and proactively cooperated with the investigation, which "materially assisted" the prosecution of the employee. For these reasons, the NSD granted USRA a declination and determined that USRA was not required to pay any further disgorgement, forfeiture, or restitution.

In the White Deer matter, shortly after the private equity firm White Deer acquired a company, it discovered that the co-founder and former CEO of the acquired company had directed the company to complete sales to customers in Iran, Syria, Venezuela, and Cuba. White Deer also discovered that the company had falsified financial records, export documents, and invoices. Both White Deer and the acquired company self-disclosed the misconduct to the DOJ, the Department of the Treasury's Office of Foreign Assets Control, and the Commerce Department's Bureau of Industry and Security. The DOJ determined that the acquisition was lawful and bona fide, White Deer had no pre-existing disclosure obligation, the self-disclosure was timely, White Deer provided exceptional and proactive cooperation, and White Deer timely and appropriately remediated the misconduct. As a result, the DOJ declined to prosecute White Deer for the misconduct. The DOJ also entered into a non-prosecution agreement with the acquired company and required the acquired company to disgorge over $3 million in its profits from the misconduct. The acquired company separately reached settlements with the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) and the Bureau of Industry and Security (BIS). The White Deer declination provides useful guidance to companies involved in or considering merger and acquisition transactions on mitigating the risk of any pre-acquisition criminal violations of national security laws.

These matters demonstrate that companies and corporate officers should weigh the risk of disclosure against the potential benefit of receiving a declination under the NSD Enforcement Policy or NSD M&A Safe Harbor Policy.

4. Gilead Settles False Claims Act Case with the DOJ

On April 29, 2025, pharmaceutical manufacturer Gilead Sciences, Inc. ("Gilead") **settled** a civil lawsuit with the U.S. Attorney's Office for the Southern District of New York for violations of the False Claims Act (FCA) and Anti-Kickback Statute (AKS). Gilead develops, manufactures, and sells drugs treating HIV/AIDS, which are frequently reimbursed through Medicare and Medicaid. The settlement resolves claims that through its "HIV Speaker Programs," Gilead

offered and paid kickbacks to healthcare practitioners in the form of honoraria payments, lavish meals and travel expenses to induce them to prescribe Gilead HIV Drugs. According to the government, these kickbacks violated the AKS and caused false claims for Gilead HIV Drugs to be submitted to and paid by federal healthcare programs in violation of the FCA. The settlement also resolves allegations that Gilead's compliance program failed to prevent kickbacks despite having readily available data evidencing the scheme.

As part of the settlement, Gilead admitted to using speaker programs to funnel millions of dollars in kickbacks to doctors who prescribed its HIV drugs in an effort to drive up sales from 2011 to 2017. Gilead also agreed to pay a total of $202 million, of which over $176 million will be paid to the United States government and the remainder to various states.

5. Three FCPA Cases Against Individuals Move Forward

After the Justice Department's review mandated by President Trump's **February 10 executive order** pausing FCPA enforcement, the DOJ filed notices of authorization to proceed in three cases in early April: (i) **United States v. Bautista, Pinate, Vasquez, and Moreno**, in which three executives of a voting machine company (a Venezuelan citizen, a U.S. citizen, and a dual Venezuelan-Israeli citizen) and a Philippine foreign official are charged in connection with an alleged bribery and money laundering scheme associated with a bid to win business in the Philippines; (ii) **United States v. Hobson**, in which Charles Hobson, a former coal company executive, is accused of bribing Egyptian officials to obtain state contracts; and (iii) **United States v. Zaglin, Marchena, and Centeno**, in which a Georgia businessman, a former Honduran government official, and a former Florida resident are charged with participating in a scheme to pay and conceal bribes to Honduran government officials to secure contracts to provide uniforms and other goods to the Honduran National Police. Each of the notices of authorization to proceed contained nearly identical language stating that the government had completed a "detailed review" of the case as contemplated by the executive order and now intends to proceed to trial.

The decision to move forward with these prosecutions came during the FCPA enforcement pause, during which all pending FCPA cases were reviewed and only continued with Attorney General Pam Bondi's authorization. Although the **FCPA pause has now ended**, the DOJ's decision to prioritize and proceed with these cases concerning allegations of foreign bribery tied to government contracts aligns with **federal enforcement priorities**, specifically to target conduct tied to individual misconduct with corrupt intent.